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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,573	03/15/2004	Daniel Perlman	PERL.10.01	1722
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WESLEY B. AMES 7031 LOS VIENTOS SERENOS ESCONDIDO, CA 92029			EXAMINER RAMDHANIE, BOBBY	
			ART UNIT	PAPER NUMBER
			1797	
			MAIL DATE	DELIVERY MODE
			12/16/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/800,573

Applicant(s)

PERLMAN, DANIEL

Examiner

BOBBY RAMDHANIE

Art Unit

1797

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-13, 19 and 20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-13, 19, & 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection. The new grounds of rejection are necessitated by applicant's amendments to the claims.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 5, 6, 7, 8, & 12 are rejected under 35 U.S.C. 102(b) as being anticipated by HOLMES (US3147721).

4. Applicants' claims are toward a method.

5. Regarding Claims 1, 2, 5, 6, 7, 8, & 12, HOLMES discloses the method of covering an opening in a laboratory container with aluminum foil to provide a heat-resistant and solvent-resistant closure, comprising the steps of: A). Providing a preformed aluminum foil cup of sufficient size to cover said opening, wherein the aluminum foil forming said cup is approximately 0.0003 to approximately 0.002 inches thick (See Figure 1 Item 10 – a laboratory container is extremely broad term and reads on a cup & Item 20 – lid & See column 3 lines 49-56 for thickness range), said cup is free of any substance that could contaminate said container (this would be inherent to the Item 10 because it would be non-logical to place a contaminated lid onto a human-

consumable product), B). Said cup comprises a bottom wall and a raised perimeter sidewall continuous with, and surrounding said bottom wall, and said cup tolerates exposure to heat of at least 300 degrees C (See Figure 1 Item 10 & See Column 3 lines 49-66, Aluminum tolerates exposure to heat of at least 300°C); C). Placing said cup in an inverted orientation over said opening (See Figure 1, the cup must be inverted to have the cup compress onto the laboratory container).; optionally adjusting the shape and size of said cup so as to fit over said opening, and D). Compressing the sidewall of said cup to a friction fit around said opening.

6. Additional Disclosures Included: Claim 2: Said cup is sterile (See Figure 1; this would be inherent to the food industry for products in contact with food for human consumption); Claim 5: Said aluminum foil is between approximately 0.0005 and approximately 0.001 inches thick (See Column 3 lines 49-56); Claim 6: The shaping of said cup is produced using a mechanical forming die that utilizes a forming means selected from the group consisting of pressure, heat, and a combination thereof (See Title); Claim 7: Said cup is an open dish-shaped structure selected from the group consisting of tubs, trays, cups, bowls, canisters and other vessels that are free of any structural features that would interfere with the use of said cup as a covering for a laboratory container opening (See Figure 1 Item 20); Claim 8: The surface shape of said sidewall is selected from the group including pleated, fluted, crinkled and dimpled (See Figure 1 Item 20); Claim 12: Said cup is manufactured without using a lubricant that could contact and contaminate said cup or multiple cups in a nested stack of similar

cups (See Column 4 line 6 to Column 14 line 16, no lubricant is used in the manufacture of the cup).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 1-3, 5, 7, 8, & 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over SONNENBERG (US2361507) in view of SCHMITT (US1163039).

10. Applicant's claims are toward a method.

11. Regarding Claims 1-3, 5, 7, 8, & 13, SONNENBERG discloses the method of covering an opening in a laboratory container with aluminum foil to provide a heat-resistant and solvent-resistant closure, comprising the steps of:

A). Providing a preformed aluminum foil cup of sufficient size to cover said opening, wherein the aluminum foil forming said cup is approximately 0.0003 to approximately

0.002 inches thick (See Page 1 Right Column line 54 to Page 2 left column line 13), said cup is free of any substance that could contaminate said container (this would be essential for the cap since it will be in contact with food for human consumption), B). Said cup comprises a bottom wall and a raised perimeter sidewall continuous with, and surrounding said bottom wall, and said cup tolerates exposure to heat of at least 300 degrees C (See Figure 6); C). Placing said cup in an inverted orientation over said opening (See Figure 6, the cup is inverted); optionally adjusting the shape and size of said cup so as to fit over said opening, and compressing the sidewall of said cup to a friction fit around said opening. SONNENBERG does not disclose that the inserted disk is metal. SONNENBERG does however disclose that the disk is a conventional type of disk. SCHMITT discloses metal cup for covering a laboratory container with a conventional disk. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the disk of SONNENBERG with the disks of SCHMITT so that the entire cup is capable of tolerating exposure to heat of at least 300°C because SCHMITT discloses that the disk normally used may be replaced with a disk of metal (See Page 1 Right Column lines 101-109).

12. For Claim 2, the combination of SONNENBERG and SCHMITT discloses the method of claim 1, except wherein said cup is sterile. It would have been obvious to one of ordinary skill in the art at the time the invention was made to mandate that the cup is sterile to prevent contamination of the milk in the bottles.

13. For Claim 3, the combination of SONNENBERG and SCHMITT discloses the method of claim 2, except wherein said cup has been sterilized by a process selected

from the group consisting of radiation sterilization and gas sterilization. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the sterilization of the cup with gas sterilization to prevent contamination of the milk (heat and pressure sterilization may define gas sterilization and would have been obvious to one in the art at that time).

14. Additional Disclosures Included: Claims 5: The method of claim 1 wherein said aluminum foil is between approximately 0.0005 and approximately 0.001 inches thick (See Page 2 Left Column lines 1–20); Claim 7: Said cup is an open dish-shaped structure selected from the group consisting of tubs, trays, cups, bowls, canisters and other vessels that are free of any structural features that would interfere with the use of said cup as a covering for a laboratory container opening (See SONNENBERG, Figure 6, & See Figure 3 SCHMITT); Claim 8: The method of claim 1 wherein the surface shape of said sidewall is selected from the group including pleated, fluted, crinkled and dimpled (See SONNENBERG, Figure 6, & See Figure 3 SCHMITT); Claim 13: Said container is selected from the group consisting of a beaker, a flask, a bottle, a graduated cylinder, a test tube, a centrifuge tube, a cuvette, a vial, and a scoop (See SONNENBERG, Figure 6, & See Figure 3 SCHMITT);

15. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over HOLMES in view of WALTER ET AL (DE3207426; a Derwent Abstract in English is provided and an English equivalent of this document is found as US4543770).

16. Applicants' claim is toward a method.

17. Regarding Claim 3, HOLMES discloses the method of Claim 2, except wherein said cup has been sterilized by a process selected from the group consisting of radiation sterilization and gas sterilization. HOLMES does however disclose that the cup is made by a process with a shape-forming tool and die. WALTER ET AL discloses the method of making a cup from aluminum foil using a shape-forming tool and die (See (Figures 1-4; either document for WALTER ET AL). WALTER ET AL further discloses the use of a medium that is used to sterilize the cup during the process (See Derwent Abstract & Abstract of US4543770 & Column 3 line 67 to Column 4 line 2). It would have been obvious to one of ordinary skill in the art at the time the invention was made to sterilize said cup by a process selected from the group consisting of radiation sterilization and gas sterilization since WALTER ET AL discloses this process is capable of removing any residual germs that may be left in the area of the molded cup (See Column 2 lines 31-46).

18. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over HOLMES.

19. Applicants' claims are toward a method.

20. Regarding Claims 9-11, HOLMES discloses the method of claim 1 except wherein the length measured across the largest dimension of said bottom wall is between 1 inch and 6 inches. HOLMES does however disclose that the aluminum cup is to snugly fit the opening of the laboratory container – which in the specific example has the largest diameter to be between 1 and 6 inches (See Column 3 lines 68-75). It would

have been obvious to one of ordinary skill in the art at the time the invention was made to modify the cup to have the largest diameter to be within 1 and 6 inches to compress tightly onto the laboratory container.

21. For Claims 10 & 11, HOLMES discloses the method of claim 1 except wherein the height of said perimeter wall is between 0.25 inches and 2.5 inches or more specifically between .5-1.5 inches. HOLMES does however disclose that the cup has an inner and outer perimeter wall. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the height of either wall to be between either range since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

22. Claims 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over HOLMES in view of MUNK (US4522332).

23. Applicants' claims are toward a method.

24. Regarding Claim 13, HOLMES discloses the method of claim 1 except wherein said container is selected from the group consisting of a beaker, a flask, a bottle, a graduated cylinder, a test tube, a centrifuge tube, a cuvette, a vial, and a scoop. MUNK discloses the method of inverting a cover onto a beaker or cup (See Column 3 line 68). It would have been obvious to one of ordinary skill in the art at the time the invention was made to select a container from the group consisting of a beaker, a flask, a bottle, a

graduated cylinder, a test tube, a centrifuge tube, a cuvette, a vial, and a scoop because in the art of laboratory containers, a beaker may define a cup.

25. Claims 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over HOLMES.

26. Applicant's claim is toward a method.

27. Regarding Claim 13, HOLMES discloses the method of claim 1 except wherein said container is selected from the group consisting of a beaker, a flask, a bottle, a graduated cylinder, a test tube, a centrifuge tube, a cuvette, a vial, and a scoop. It would have been obvious to one of ordinary skill in the art at the time the invention was made to select a container from the group consisting of a beaker, a flask, a bottle, a graduated cylinder, a test tube, a centrifuge tube, a cuvette, a vial, and a scoop because in these additional containers are ubiquitous in laboratory settings and one of ordinary skill in the art would have the common sense knowledge and understanding that if they are capable of covering one laboratory container with an aluminum cup, it would be capable of covering other containers as well.

28. Claims 19 & 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over HOLMES in view of STAKEL (US3550421).

29. Applicant's claims are toward a method.

30. Regarding Claim 19, HOLMES discloses the method of claim 1, wherein said cup is manufactured using a shaped cup-forming tool and die (See Figures 3-7). HOLMES

does not disclose that said cups are manufactured with interleaf sheets between cups to form multiple cups simultaneously in a stack. STAKEL discloses a method of manufacturing cups using a shaped cup forming tool and die wherein said cups are formed in nested stacks individually separable fluted cup shaped receptacles by juxtaposing a plurality of layers of sheet material with at least one metallic foil layer juxtaposed between two of said layers (See Abstract). It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate manufacturing the cups of HOLMES via the nested stack approach from STAKEL because according to STAKEL, it has been impractical to stamp stacked metallic foil sheets into stacks of fluted cups because of the swaging or jamming together of the resulting cups, making it impossible to separate them from the fluting dies or from each other without tearing. Accordingly, it is an object of the invention to provide methods for the fabrication of fluted receptacles tending to maintain them in their fluted concave configuration until they are used by the consumer.

31. Additional Disclosures Included: Claim 20: Said cup is removed from an inverted stack of said cups (See Column 2 lines 14-17).

Telephonic Inquiries

32. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BOBBY RAMDHANIE whose telephone number is (571)270-3240. The examiner can normally be reached on Mon-Fri 8-5 (Alt Fri off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Walter Griffin can be reached on 571-272-1447. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/B. R./

/Walter D. Griffin/
Supervisory Patent Examiner, Art Unit 1797